

Appeal from a decision of the Alaska State Office, Bureau of Land Management, approving for patent lands described in village selection application F-14921-A.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Easements--Alaska Native Claims Settlement Act: Easements

Although the primary standard for determining which public easements are reasonably necessary for access is present existing use, 43 CFR 2650.4-7(a)(3) authorizes a departure from this standard if, inter alia, there is no reasonable alternative route or site available.

APPEARANCES: Charles A. Dunnagan, Esq., Anchorage, Alaska, for appellant; Lance B. Wilson, Esq., Anchorage, Alaska, for the State of Alaska.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Tigara Corporation has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 24, 1985, holding lands described in village selection application F-14921-A to be proper for patent pursuant to section 14(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(a) (1982).

Appellant's statement of reasons focuses upon a draft BLM memorandum of April 25, 1985, recommending two easements to be reserved in a future conveyance of lands described in F-14921-A. The first such easement is a 25-foot trail easement from the eastern boundary of the State-owned airstrip in lot 5, United States Survey (U.S.S.) 3515, T. 34 N., R. 35 W., Kateel River Meridian, northeasterly through the adjacent lot 12. The second easement is a one-acre site easement adjacent to the survey line common to lots 5 and 12 and on the south side of the trail easement.

Appellant contends that the trail easement is poorly chosen because it dead-ends against private land less than 1,000 feet away. The site easement is also poorly located in appellant's view because it is located in lot 12 at the northeast end of the runway while the airport terminal is at the south-east end. Anyone wishing to use the site easement as a mode of transportation transfer site would have to trespass on Tigara's lands or utilize the runway for access, appellant contends. Appellant further argues that these easements violate 43 CFR 2650.4-7(a)(3) and (b)(1)(iv) and should be postponed.

Tigara's reliance on the April 25 memorandum is misplaced because BLM made two critical changes in its substance prior to issuing the October 24 decision on appeal. The first change is deletion of any reference to a 25-foot trail easement. The second change is a relocation of the one-acre site easement to a site in lot 13 substantially closer to the airport terminal. Appellant's arguments focusing on the poor location of the trail and site easements are, therefore, based on erroneous assumptions. Moreover, in a pleading filed on September 26, 1986, the State of Alaska stated that it "stands ready to guarantee public access to the site easement by permitting travel along a 25-foot strip on the eastern edge of the airport property between the site easement and the terminal area." Appellant's arguments challenging the appropriateness of the easement locations are, accordingly, rejected.

[1] Tigara's argument that BLM has violated 43 CFR 2650.4-7(a)(3) is based upon its view that there is no present existing use of the lands reserved. That regulation states in part:

(3) The primary standard for determining which public easements are reasonably necessary for access shall be present existing use. However, a public easement may be reserved absent a demonstration of present existing use only if it is necessary to guarantee international treaty obligations, if there is no reasonable alternative route or site available, or if the public easement is for access to an isolated tract or area of publicly owned land. (Emphasis supplied).

Appellant's argument overlooks the language underscored above providing for an exception to the present existing use standard where there exists no reasonable alternative site available. The State of Alaska contends that no reasonable alternative site exists because virtually all of the land surrounding the airport has been or will be conveyed to Tigara. Tigara acknowledges that the entirety of Point Hope, the situs of the lands at issue, has been transferred to the corporation with the exception of the lands in U.S.S. 3515 and 3515A. Statement of reasons, Dec. 27, 1985, at 2. By its decision of October 24, BLM approved for patent all available lands in these surveys. Thus it appears, as the State suggests that no reasonable alternative site is available for the easement at issue. We hold, accordingly, that Tigara's argument that regulation 43 CFR 2650.4-7(a)(3) has been violated must be rejected. See *Toghotthele Corp.*, 81 IBLA 317 (1984).

Appellant's final contention charging a violation of 43 CFR 2650.4-7(b)(1)(iv) 1/ is based on the misconception that BLM has sought to reserve a trail easement in the lands to be conveyed. As discussed above, no trail easement is mentioned by BLM in the decision on appeal. Appellant's argument is, accordingly, misdirected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State office is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Bruce R. Harris  
Administrative Judge

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1/ This regulation requires that public easements for transportation purposes follow existing routes of travel unless a variance is otherwise justified.

